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Nevada Bar No. 8029

E-filed 12/06/06

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OF COUNSEL:

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ATTORNEYS FOR DESERT CAPITAL REIT, INC.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
USA COMMERCIAL MORTGAGE
COMPANY,
Debtor.

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

Chapter 11
Jointly Administered Under
Case No. BK-S-06-10725 LBR

In re:
US CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,
Debtor.

In re:
USA CAPITAL FIRST TRUST DEED
FUND, LLC,
Debtor.

**EMERGENCY MOTION OF DESERT
CAPITAL REIT, INC. FOR ORDER
DETERMINING STATUS AS A
QUALIFIED BIDDER UNDER BID
PROCEDURES**

In re:
USA SECURITIES, LLC,
Debtor.

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

Desert Capital REIT, Inc. ("Desert Capital"), by and through its counsel, moves for an order determining that it is a "Qualified Bidder" under the Court's Bid Procedures in the above-captioned Chapter 11 bankruptcy proceeding. For cause, Desert Capital would show as follows:

1. Desert Capital is a real estate investment trust located at 1291 Galleria Drive, Suite 210, Henderson, Nevada 89014.

2. Desert Capital has been in business for approximately three (3) years, and is engaged in real estate investment and loan servicing. It presently has approximately \$104,430,000 in real estate assets owned or under management, and services approximately \$167,000,000 in total assets.

3. Paul D. Hamilton is employed by a subsidiary of Desert Capital, Consolidated Mortgage, LLC, as its Chief Investment Officer. Mr. Hamilton has no ownership interest in Desert Capital or in Consolidated Mortgage, LLC.

4. Knowing that it was necessary to disclose any affiliation of an equity owner of any of the Debtors prior to undertaking the extensive and laborious process of submitting a competing bid package in this case, counsel for Desert Capital contacted Lenard E. Schwartzer, counsel for Debtors and Debtors-in-Possession on November 28, 2006, to inquire whether the affiliation with Mr. Hamilton would be a disqualifying factor in the Debtors' opinion under the Bid Procedures. Mr. Schwartzer assured Desert Capital's counsel that Mr. Hamilton's affiliation

1 with the Desert Capital subsidiary would not be a basis preventing Desert Capital from being
2 determined to be a Qualified Bidder in this process.

3 5. On November 29, 2006, counsel for Desert Capital conferred with Mr. James
4 Reed, and Mr. Bill Faisel of Mesirow Financial, and Ms. Annette W. Jarvis, counsel for the
5 Debtors and Debtors-in-Possession to clarify certain matters relating to the submission of a bid
6 package. (See Declaration of Thomas A. Connop, attached hereto as Exhibit A.) Again, counsel
7 for Desert Capital inquired whether the employment of Mr. Hamilton by Consolidated Mortgage
8 would preclude Desert Capital from qualifying as a bidder under the Court's Bid Procedures.
9 Both Mr. Reed and Ms. Jarvis assured Desert Capital that Mr. Hamilton's employment would
10 not be a disqualifying factor.
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12 6. In reliance on the representations by Debtors' counsel and Debtors'
13 representative, Desert Capital prepared and timely submitted a bid package pursuant to the
14 Court's Bid Procedures on November 30, 2006.
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16 7. On December 5, 2006, Desert Capital was contacted by James Reed who advised
17 that, in order to be determined a Qualified Bidder, it would be necessary for Desert Capital to
18 increase the amount of its deposit in light of the terms of the package submitted, and that upon
19 receipt of the revised bid package, Desert Capital would be a qualified bidder. Desert Capital
20 complied with Mr. Reed's request and submitted a revised Asset Purchase Agreement
21 committing to increase the amount of its deposit to 10% of the bid or \$6,500,000.00, whichever
22 is greater. At approximately 4:30 p.m. on December 5, 2006, Desert Capital amended the
23 revised package, fulfilling Mr. Reed's request. (See Declaration of Bobby Choudhury, attached
24 hereto as Exhibit B.)
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1 8. Approximately three hours later, Mr. Reed contacted Desert Capital and purported
2 to revoke Desert Capital's qualification. The stated reason for the purported revocation was
3 Consolidated Mortgage's employment of Mr. Hamilton. (See Declaration of Todd Parriott,
4 attached hereto as Exhibit C.)

5
6 9. Mr. Hamilton's employment was specifically raised with Mr. Schwartzer, Mr.
7 Reed, and Ms. Jarvis on at least two occasions, all of whom advised that Mr. Hamilton's
8 employment would not disqualify Desert Capital. In reliance on these representations, Desert
9 Capital expended substantial time, effort and expense in preparing its bid package. It was
10 represented to Desert Capital that it was, in fact, a qualified bidder. Later, representing
11 committee opposition, the Debtors purported to retract that qualification. The Bid Procedures
12 direct that the Debtors have the discretion to determine who is and is not a "Qualified Bidder", in
13 consultation with the Committees. Any dispute is to be determined by the Court. Apparently,
14 the Debtors, at least, have determined that Desert Capital is qualified.

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16 10. Desert Capital has complied with the bid procedures. It has submitted adequate
17 evidence to illustrate that it is a Qualified Bidder. It is ready, willing and able to participate in
18 the auction process. Desert Capital's participation in the auction process is in the best interest of
19 the Debtor and its creditors.

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1 WHEREFORE, Desert Capital REIT, Inc. prays that an expedited hearing be held on this
2 emergency motion and the Court enter an order determining it to be a "Qualified Bidder" for
3 purposes of the auction to be conducted on December 7, 2006.

4 Dated: December 6, 2006

5
6 \s\ Regina M. McConnell
7 Regina M. McConnell, Esq.
8 Nevada Bar No. 8029
9 KRAVITZ, SCHNITZER, SLOANE,
10 JOHNSON & EBERHARDY, CHTD.
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ATTORNEYS FOR DESERT CAPITAL REIT, INC.

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16 Dallas, TX 75201
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18 (214) 740-8800 (telecopy)
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EXHIBIT A

Regina M. McConnell, Esq.
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DISTRICT OF NEVADA**

In re:
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COMPANY,

Debtor.

Case No. BK-S-06-10725 LBR
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In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

Chapter 11

In re:
US CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

Debtor.

Jointly Administered Under
Case No. BK-S-06-10725 LBR

In re:
USA CAPITAL FIRST TRUST DEED
FUND, LLC,

Debtor.

**DECLARATION OF THOMAS A.
CONNOP IN SUPPORT OF MOTION OF
DESERT CAPITAL REIT, INC. FOR
ORDER DETERMINING STATUS AS A
QUALIFIED BIDDER UNDER BID
PROCEDURES**

In re:
USA SECURITIES, LLC,

Debtor.

Affects:

- ☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

STATE OF TEXAS §

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COUNTY OF DALLAS §

I, Thomas A. Connop, declare as follows:

1. I am an attorney for Desert Capital REIT, Inc. in connection with its submission of a bid for assets of the Debtors in the above Chapter 11 proceedings.

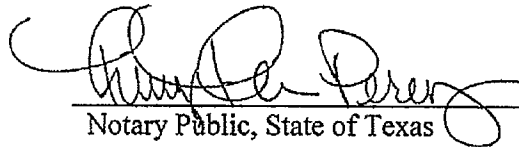
2. On November 28, 2006, I contacted Lenard E. Schwartz, counsel for Debtors and Debtors-in-Possession to inquire whether an affiliation of Mr. Paul D. Hamilton with Consolidated Mortgage, LLC, would disqualify Consolidated Mortgage, LLC or its affiliates from being a "Qualified Bidder" in these cases. Mr. Schwartz assured me that Mr. Hamilton's employment would not preclude Consolidated Mortgage, LLC or its affiliates from becoming a Qualified Bidder.

3. On November 29, 2006, I participated in a telephone conversation with Mr. James Reed and Mr. Bill Faisel of Mesirow Financial, and Ms. Annette W. Jarvis, counsel for Debtors and Debtors-in-Possession. In this conversation, I again inquired whether the affiliation with Mr. Paul D. Hamilton would be a factor that prevented Consolidated Mortgage, LLC or its affiliates from becoming a Qualified Bidder in connection with these cases. Again, we were assured that Mr. Hamilton's employment by Consolidated Mortgage, LLC would not prohibit Consolidated Mortgage, LLC or its affiliates from being a Qualified Bidder in these cases.

I submit the foregoing declaration under penalty of perjury.


THOMAS A. CONNOP

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 6th
day of December, 2006.


Notary Public, State of Texas

My Commission Expires:

08/05/10

Thuy T. Le Perez
Print Name of Notary

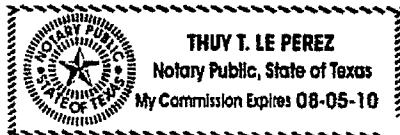


EXHIBIT B

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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Case No. BK-S-06-10725 LBR
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In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:
US CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,
Debtor.

Chapter 11
Jointly Administered Under
Case No. BK-S-06-10725 LBR

In re:
USA CAPITAL FIRST TRUST DEED FUND,
LLC,
Debtor.

**DECLARATION OF BOBBY CHOUDHURY
IN SUPPORT OF MOTION OF DESERT
CAPITAL REIT, INC. FOR ORDER
DETERMINING STATUS AS A QUALIFIED
BIDDER UNDER BID PROCEDURES**

In re:
USA SECURITIES, LLC,
Debtor.

Affects:

- ☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC

- ☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

STATE OF NEVADA §
§
COUNTY OF CLARK §

I, Bobby Choudhury, declare as follows:

1. I am the Legal Associate of Consolidated Mortgage, LLC, a subsidiary of Desert Capital REIT, Inc. in connection with its submission of a bid for assets of the Debtors in the above Chapter 11 proceedings.

2. On approximately November 20, 2006, Desert Capital REIT, Inc. disclosed to debtor's counsel and James Reed and Bill Fasel from Mesirow Financial that Paul Hamilton was currently employed by Desert Capital. I was informed that his employment would not be a deterrence for Desert Capital to become a qualified bidder.

3. On November 30, 2006, I submitted a disclosure of all pre-petition and post-petition affiliations which included Paul Hamilton as required by the Section 3(i) of the Bid Procedures.

4. On December 5, 2006, I was contacted by Mr. Reed, Vice President of Mesirow Financial in which he stated that Desert Capital had to modify the definition of Deposit so it would read that the amount of the deposit is to be the greater of 10% of the ultimate purchase price or \$6.5 million. Desert Capital complied with this request and submitted a revised Asset Purchase Agreement ("Agreement") via electronic mail.

5. Mr. Reed informed me that once the Agreement was received with the revised deposit amount, Desert Capital would be approved.

6. At approximately 4:30 p.m. on December 5, 2006, I hand delivered the Agreement to Mesirow's office fulfilling all of Mr. Reed's requests.

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1 I submit the foregoing declaration under penalty of perjury.

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BOBBY CHOUDHURY

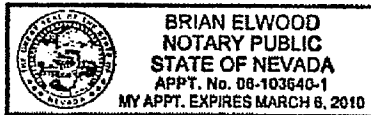
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SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 6 day of

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December, 2006.

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Notary Public, State of Nevada

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My Commission Expires:

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3/6/10

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Brian Elwood
Print Name of Notary

EXHIBIT C

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OF COUNSEL:

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UNITED STATES BANKRUPTCY COURT
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Case No. BK-S-06-10725 LBR
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Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:
US CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,
Debtor.

Chapter 11
Jointly Administered Under
Case No. BK-S-06-10725 LBR

In re:
USA CAPITAL FIRST TRUST DEED FUND,
LLC,
Debtor.

In re:
USA SECURITIES, LLC,
Debtor.

**DECLARATION OF TODD PARRIOTT IN
SUPPORT OF MOTION OF DESERT
CAPITAL REIT, INC. FOR ORDER
DETERMINING STATUS AS A QUALIFIED
BIDDER UNDER BID PROCEDURES**

Affects:

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC

- ☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

STATE OF NEVADA §
§
COUNTY OF CLARK §

I, Todd Parriott, declare as follows:

1. I am the Chief Executive Officer of Desert Capital REIT, Inc. in connection with its submission of a bid for assets of the Debtors in the above Chapter 11 proceedings.

2. On December 5, 2006, I was contacted by Mr. Reed, Vice President of Mesirow Financial in which he stated that Desert Capital is no longer a qualified bidder because of Paul Hamilton's employment.

3. I informed Mr. Reed that Paul Hamilton's employment would be terminated, if necessary, upon granting of qualified bid status.

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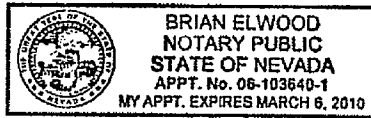
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///

1 I submit the foregoing declaration under penalty of perjury.

2 
3 TODD PARRIOTT

4 SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 6 day of
5 December, 2006.



7 
8 Notary Public, State of Nevada

9 My Commission Expires:

10 3/6/10

11 Brian Elwood
12 Print Name of Notary
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